THE HONOURABLE SRI JUSTICLE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE G.V.SEETHAPATHY

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W.P.No.25866 of 2007

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Between:

The State of A.P., rep. By its Principal Secretary to
Government, Revenue Department, Secretariat
Hyderabad & another

… Petitioners

And:

M.Bala Prakash, Occ. Asst. District Registrar
O/o Deputy Inspector General of Registration & Stamps
Powerpet, Eluru, West Godavari district

…Respondent

THE HONOURABLE SRI JUSTICLE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE G.V.SEETHAPATHY

W.P.No.25866 of 2007

ORDER:**(Per G.V. Seethapathy, J)**

This writ petition is filed assailing the order dated 06.11.2007 passed in O.A.No.1096 of 2007 on the file of Andhra Pradesh Administrative Tribunal (for short 'Tribunal'), Hyderabad, wherein the said petition filed by the respondent herein seeking a direction to consider his case for promotion/in-charge arrangement to the post of District Registrar, without reference to the Charged Memo No.Vig.2/25751/98, dated 13.09.2003, was allowed.

2. Heard the learned Government Pleader for the petitioners and the learned counsel for the respondent. Records are perused.

3. The respondent herein, while he was working as Sub Registrar (Grade-I) in the office of the Deputy Inspector General of Registration and Stamps, disciplinary proceedings were initiated against him. His case for promotion as Assistant District Registrar was deferred by the Departmental Promotion Committee (for short 'DPC'), which met on 22.02.2001. Charge memo dated 26.06.2001 was issued against him framing four charges under Rule 20 of A.P. Civil Services (CC & A) Rules 1991. The respondent herein approached the Tribunal vide O.A.No.4475 of 2001. The said application was disposed of with a direction to the respondent to make a representation to the Commissioner and Inspector General

as per Rules. Accordingly, the respondent made a representation and the review D.P.C. which met on 01.10.2001 considered his case for promotion as Assistant District Registrar, as charges were not framed on the date of drawl of panel and his name was cleared by D.P.C. Accordingly, the respondent was promoted as Assistant District Registrar on 17.01.2001. The Commissioner and Inspector General, who is disciplinary authority, issued fresh charges vide No.Vig.3/25751/1998 on 13.09.2003 against the respondent and an Enquiry Officer was appointed. The respondent herein filed O.A.No.1985 of 2005 before the Tribunal impugning the charge memo dated 13.09.2003 and for a direction to the authorities to consider his case for promotion to the post of District Registrar, without reference to the impugned charge memo. After hearing both sides, O.A.No.1985 of 2005 was dismissed on 14.3.2006, with a direction to the authorities to proceed with the enquiry expeditiously and complete it and pass appropriate orders, not later than six months, from the date of receipt of copy of the said order. The respondent herein, filed W.P.No.6494 of 2006 impugning the orders in O.A.No.1985 of 2005 before this Court and the same was dismissed on 03.04.2006. There has been change of Enquiry Officers from time to time and the enquiry was not completed within the period of six months granted in O.A. No.1985 of 2005. The petitioners herein filed M.A.No.3147 of 2006 in O.A.No.1985 of 2005 seeking extension of time by six months from 24.09.2007 for completion of the enquiry. By order dated 16.10.2006, further time of three months was granted to the petitioners herein to conclude disciplinary proceedings with a further direction that if the petitioners herein do not conclude the disciplinary proceedings within the said extended period of three months, disciplinary

proceedings shall be deemed to have been closed. The disciplinary proceedings were not completed even within the said extended period of three months. The petitioners herein filed M.A.No.4237 of 2006 seeking further extension of time from 24.12.2006 for examination of the enquiry report and passing final orders. The enquiry report is said to have been submitted by the Inquiry Officer on 12.12.2006 and the same is pending consideration. By order dated 29.12.2006, four weeks time was finally granted to conclude the disciplinary proceedings. According to the petitioners, the Vigilance Commissioner in his letter dated 07.04.2007 advised the Department to consider differing the findings of the Inquiry Officer. Accordingly, the Commissioner and Inspector General issued a show cause notice to the respondent herein-charged officer on 26.09.2007 differing with the findings of the Inquiry Officer and seeking the respondent to submit his written explanation. It is not disputed that the disciplinary proceedings have not been concluded so far and no final orders have yet been passed.

4. Meanwhile, the respondent herein filed O.A.No.1096 of 2007 on 11.02.2007 seeking a direction to the petitioners herein to consider his case for promotion/incharge arrangements to the post of District Registrar, without reference to the charged memo dated 13.09.2003. While admitting O.A., interim order was granted on 07.03.2007 directing the petitioners herein, to consider the case of the respondent herein, for promotion to the post of District Registrar, without reference to the charged memo. The petitioners herein filed vacate petition i.e., V.M.A.No.675 of 2007 in O.A.No.1096 of 2007 before the Tribunal. The Tribunal allowed O.A. on the ground that the orders passed in M.A.No.3147 of 2006 in O.A.No.1985 of 2005 have become final, have not been

challenged and accordingly, the disciplinary proceedings shall be deemed to have been closed. The petitioners herein, were therefore, directed to consider the case of the respondent herein, for the post of District Registrar on par with his juniors, without reference to the charge memo dated 13.09.2003.

5. The main submission of the petitioners herein is that the enquiry was completed and enquiry report was submitted on 12.12.2006 within the extended period, but however, the disciplinary proceedings could not be completed and final orders passed because of unavoidable delay, as the matter had to be referred to the Andhra Pradesh Vigilance Commission, at every stage and there was no willful default on the part of the disciplinary authority. Learned counsel for the respondent on the other hand contends that in view of the orders passed earlier in M.A.No.3147 of 2006, which have since become final and as the disciplinary proceedings have not been concluded, even within the extended time, the said proceedings shall be deemed to have been closed and the respondent herein is entitled to be considered for promotion, without reference to the charge memo dated 13.09.2003.

6. It is not disputed that the enquiry was not completed within the original period of six months granted by the Tribunal in the order dated 14.03.2006 while disposing of O.A.No.1985 of 2005, or within the extended period of three months granted by order dated 16.10.2006 in M.A.No.3147 of 2006, or even within four weeks on further extension granted in the order dated 29.12.2006 in M.A.No.4237 of 2006. What- ever be the reason for the delay, the fact remains that the disciplinary proceedings have not been concluded in spite of repeated extension of time granted by the Tribunal. It is also not disputed that the order dated 16.10.2006 in M.A.No.3147 of 2006, wherein, it was directed that

the disciplinary proceedings shall be deemed to have been closed in the event of the same not being concluded within the extended period of three months, was not challenged by the petitioners herein and the said order has become final. By virtue of operation of the said order, the disciplinary proceedings must be deemed to have been closed due to failure of the petitioners to conclude the same within the extended period of three months. The fact that the enquiry was completed and enquiry report was submitted on 12.12.2006 is of no avail to the petitioners, inasmuch as, the enquiry is only a part of the disciplinary proceedings and conclusion of enquiry does not tantamount to conclusion of disciplinary proceedings. In the order dated 16.10.2006 in M.A.No.3147 of 2006, which has since become final, the direction was that the disciplinary proceedings themselves shall be deemed to have been closed. The petitioners herein have not chosen to challenge the said order nor did they choose to conclude the disciplinary proceedings within the extended time. In view of the same, the respondent herein would be entitled to seek consideration of his case for promotion without reference to the charge memo dated 13.09.2003, as the disciplinary proceedings pursuant thereto, stood terminated by virtue of operation of the order dated 16.10.2006 in M.A.No.3147 of 2006. The impugned order of the Tribunal allowing O.A.No.1096 of 2007 and directing the petitioners herein to consider the case of the respondent herein for promotion to the post of District Registrar on par with his juniors without reference to the charged memo dated 13.09.2003, does not therefore, call for any interference.

7. It is needless to state that a direction to consider the case does not amount to and cannot be construed as a mandate to allow the claim, as held by this Court in '***P.R.Naidu, Board of Management, Sri Krishnadevaraya University, Anantapur &***

another vs. D.Chandramouli Reddy[1]' and consideration means due consideration on merits and not an empty formality, as held in '***Gollapalli Bala vs. A.P.TRANSCO***[2]'.

8. In the result, the writ petition is dismissed. No order as to costs.

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D.S.R.VARMA, J

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G.V.SEETHAPATHY, J

Date: 11th DECEMBER 2007

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[1] 1999 (4) ALD 405 (DB)

[2] 2002 (5) ALT 15